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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.3764 OF 2024

Litesh K. Sanghvi & Ors. ...Petitioners

V/s.

Ravindra R. Dharmashi & Ors. ...Respondents

Mr.G.S. Bhat i/b Mr.M.S. Lad for the Petitioners.

Mr.Mayur Khandeparkar with Mr.Vaibhav Charalwar, Mr.Dhiren Durante and Ms.Ruchi Magoo i/b Lexicon Law Partners for Respondent Nos.1 and 2.

CORAM : RAJESH S. PATIL, J.

DATE : 14TH MARCH, 2024.

P.C. :-

1. This Writ Petition is filed by the Landlords, challenging the order passed by the Appellate Bench of the Court of Small Causes, Mumbai thereby setting aside the order passed by the Trial Court and restoring R.A.E. Suit No.631 of 2014, to file.

2. Respondent Nos.1 and 2 claim to be the legal heirs of the original Tenant "Hansaraj Dosabhai". The premises being Room Nos.1, 2, 3 and 4 on the first floor of Padam Bhuvan,

situated at Jawaharlal Nehru Road, Mulund (West), Mumbai - 400 080. The Petitioners herein being the Landlords of the said premises, filed an R.A.E. Suit in the year 2014 amongst other grounds on the ground of 'sub-letting'. In the said eviction suit, the Petitioners had joined the original Tenant Hansaraj Dosabhai as Defendant No.1 and one Trust as Defendant No.2. The said suit was filed on the ground that Defendant No.1 had *sub-letted* the premises to Defendant No.2.

3. On 5 April 2017, the Plaintiffs / Landlords added the Registrar, Small Causes Court, Mumbai as a party Defendant No.3. Thereafter the eviction decree was passed on 30 July 2022 and according to the Plaintiffs, Defendant No.2 pursuant to the said decree handed over possession of the said premises to the Plaintiffs on 21 November 2022.

4. The present Respondent Nos.1 and 2 thereafter filed an application being MARJI Application for setting aside *ex-parte* decree on the ground that they are the legal heirs of the original Tenant, who is shown as Defendant No.1 in the suit. It is submitted that the original Tenant had died on 3 February 1967.

It is further submitted that the Plaintiffs were aware about the death of the original Tenant since the Plaintiffs Landlords stayed on the ground floor of the building known as Padam Bhuvan and the suit premises are on the first floor of Padam Bhuvan. The said MARJI Application of Respondent Nos.1 and 2 was rejected by the Trial Court by its order dated 16 January 2023.

5. Being dis-satisfied by the order dated 16 January 2023, Respondent Nos.1 and 2 filed Miscellaneous Appeal before the Appellate Bench of the Court of Small Causes, Mumbai. The Appellate Bench of the Court of Small Causes, Mumbai after hearing both the sides, has allowed the said Miscellaneous Appeal, thereby setting aside the impugned order and judgment dated 16 January 2023 passed by the Trial Court. In sequel, the R.A.E. Suit No.631 of 2014 was restored to file to be heard by the Trial Court on its own merit. So also the present Respondent Nos.1 and 2 were directed to be pleaded as a party Defendant in the eviction suit.

6. Being dis-satisfied with the judgment and order passed by the Appellate Bench of the Court of Small Causes, Mumbai,

the present Writ Petition has been filed by the Landlords / Original Plaintiffs.

7. Mr.Bhat appearing for the Landlords submitted that during the pendency of the suit, one Advocate S.M. Basutkar filed a praecipe before the Trial Court on 15 June 2018, informing that Defendant No.1 had expired long back and is survived by the legal heirs and representatives. Mr.Bhat submits that even though such a praecipe was filed, no steps were taken by the legal heirs and representatives of the original Defendant No.1 by preferring any kind of application, therefore, the Court had no option but to proceed further in the matter and decided the eviction suit.

8. Mr.Bhat further submitted that deceased tenant was represented by Registrar of Small Causes Court, hence suit was contested and the judgment was not *ex-parte*.

9. Mr.Khandeparkar appearing for Respondent Nos.1 and 2 submitted that the Landlords were well aware of the names of the legal heirs and representatives, since the Landlords stay on the ground floor of the building in which the suit premises, are

situated at first floor. Mr.Khandeparkar further submitted that in fact by a praecipe dated 15 June 2018, Advocate Mr.Basutkar informed the Court that Defendant No.1 had died. Mr.Khandeparkar submitted that on the same day, the Trial Court directed the Plaintiffs to take steps to bring on record the legal heirs and representatives of the deceased Defendant No.1. He submits that such a decree could never have been passed when the Court was informed about the death of Defendant No.1. In fact according to him, the said suit should have been dismissed for non-bringing on record the legal heirs and representatives of the deceased Defendant No.1.

10. I have heard both the sides and have considered the documents produced before me, including the Roznama dated 15 June 2018 and also the application made by the Original Plaintiffs before the Trial Court on 15 June 2018.

11. A praecipe filed on 15 June 2018 by Advocate Mr.Basutkar clearly mentioned that Defendant No.1 had died long back and the names and address of the legal heirs were mentioned in the said praecipe dated 15 June 2018. In the

Roznama, which shown to me today of 15 June 2018, it has been recorded that the advocate for the Plaintiffs was present on that day. And on Exhibit - 19/D, it has been mentioned that intimation filed by the Defendant about legal heirs of Defendant No.1, the Plaintiffs to take steps in the matter.

12. It appears that even after specific order passed by the Court on 15 June 2018, the Plaintiffs chose not to take any steps in the matter and proceeded further in the matter. I am of the view that the suit should have been dismissed on the ground that no steps have been taken to bring on record the legal heirs and representatives of the deceased Defendant No.1. The Appellate Court of the Small Causes, Mumbai has observed these facts in the proceedings and considering various judgments passed by this Court and the Supreme Court and considered the Pursis dated 15 June 2018 filed before the Trial Court. So also the Appellate Bench of the Court of Small Causes, Mumbai has also considered various provisions under Order XXII Rule 4-A of the Code of Civil Procedure and the Court has come to a conclusion that there was sufficient cause for Respondent Nos.1 and 2

herein to not appear before the Trial Court. Hence the decree passed by the Trial Court was set-aside and the MARJI Application No.193 of 2022 filed by Respondent Nos.1 and 2 was allowed.

13. I find no infirmity in the order and judgment passed by the Appellate Bench of the Court of Small Causes, Mumbai. No case is made out to entertain this Writ Petition. Hence the Writ Petition is dismissed. There shall be no order as to costs.

14. It is the case of Mr.Khandeparkar that they have apprehension that the Landlords may create third party rights in the suit premises. Mr.Khandeparkar submits that Respondent Nos.1 and 2 had preferred an application under Section 144 of the Code of Civil Procedure for restoration of possession of the suit premises to Respondent Nos.1 and 2 before the Appellate Bench of the Court of Small Causes, Mumbai. However, since the Appellate Bench of the Court of Small Causes, Mumbai was of the opinion that the said application filed under Section 144 of the Code of Civil Procedure should be preferred before the Trial Court, therefore, such application was disposed of.

Mr.Khandeparkar on instructions of his clients submits that his clients are in the process of filing such application before the Trial Court.

15. Suffice would be the purpose if Respondent Nos.1 and 2 are hereby allowed to file an application under section 144 of the Code of Civil Procedure within a period of one week from today and the Trial Court should allow the original Plaintiffs to file reply to the said application and decide the said application, as expeditiously as possible and in any case within a period of four weeks from today. In the meanwhile, till such application is decided, the original Plaintiffs are hereby directed not to create any third party rights and interest in the suit property. Mr.Khandeparkar also submits on instructions from his clients that if the Landlords inform them what is the outstanding amount of rent as of today, they will clear the same within four weeks from today by paying the same directly to the Landlords.

16. If the Landlords inform Respondent Nos.1 and 2 herein about the outstanding amount within two weeks from today, Respondent Nos.1 and 2 will pay the said outstanding amount

within further period of two weeks from the date of intimation. Since the Appellate Bench of the Court of Small Causes, Mumbai had granted time, Mr.Bhat at this stage seeks liberty to extend the time period for bringing on record the legal heirs of the deceased Respondent Nos.1 and 2 before the Trial Court, since the directions were given by the Appellate Bench of the Court of Small Causes, Mumbai to bring on record legal heirs of deceased Respondent Nos.1 and 2 has already expired. The Original Plaintiffs are now granted further period of two weeks to bring on record the legal heirs of Respondent Nos.1 and 2 herein in R.A.E. Suit No.631 of 2014.

17. The Writ Petition is accordingly disposed of.

18. So also Respondent Nos.1 and 2 have been added as party and before the Trial Court they will not insist for writ of summons and they will waive service.

(RAJESH S. PATIL, J.)